

AMENDED IN SENATE JANUARY 9, 2008

AMENDED IN SENATE APRIL 10, 2007

**SENATE BILL**

**No. 550**

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**Introduced by Senator Ashburn**

February 22, 2007

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An act to amend Section 186.22 of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Ashburn. Gangs: safe school zones.

Existing law, as amended by Proposition 21 of the March 7, 2000, statewide election, provides that it shall be a fact in aggravation if a person is convicted of a specified offense committed for the benefit of a criminal street gang and within 1,000 feet of a school, as specified.

This bill would, ~~instead in addition, provide for an additional term of imprisonment of one year that it shall be a fact in aggravation~~ if a person is convicted of a specified offense committed for the benefit of a criminal street gang and within 1,000 feet of a ~~school or~~ park, as specified.

~~By creating specifying a new enhancement for circumstance in aggravation of an existing offense for purposes of sentencing,~~ this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Proposition 21 requires a statute amending the provisions of the act to be passed in each house by rollcall vote entered into the journal,  $\frac{2}{3}$  of the membership of each house concurring.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 186.22 of the Penal Code is amended to  
2 read:  
3 186.22. (a) Any person who actively participates in any  
4 criminal street gang with knowledge that its members engage in  
5 or have engaged in a pattern of criminal gang activity, and who  
6 willfully promotes, furthers, or assists in any felonious criminal  
7 conduct by members of that gang, shall be punished by  
8 imprisonment in a county jail for a period not to exceed one year,  
9 or by imprisonment in the state prison for 16 months, or two or  
10 three years.  
11 (b) (1) Except as provided in paragraphs ~~(3) and (4)~~ (4) and  
12 (5), any person who is convicted of a felony committed for the  
13 benefit of, at the direction of, or in association with any criminal  
14 street gang, with the specific intent to promote, further, or assist  
15 in any criminal conduct by gang members, shall, upon conviction  
16 of that felony, in addition and consecutive to the punishment  
17 prescribed for the felony or attempted felony of which he or she  
18 has been convicted, be punished as follows:  
19 (A) Except as provided in subparagraphs ~~(B), (C), and (D)~~ and  
20 (C), the person shall be punished by an additional term of two,  
21 three, or four years at the court's discretion.  
22 (B) If the felony is a serious felony, as defined in subdivision  
23 (c) of Section 1192.7, the person shall be punished by an additional  
24 term of five years.  
25 (C) If the felony is a violent felony, as defined in subdivision  
26 (c) of Section 667.5, the person shall be punished by an additional  
27 term of 10 years.  
28 ~~(D)~~  
29 (2) If the underlying felony described in paragraph (1) is  
30 committed on the grounds of, or within 1,000 feet of, a public or  
31 private elementary, vocational, junior high, or high school, during  
32 hours in which the facility is open for classes or school-related  
33 programs or when minors are using the facility, or within 1,000  
34 feet of a public or private park where children regularly gather,  
35 ~~the person shall be punished by an additional term of one year.~~

1 *that fact shall be a circumstance in aggravation of the crime in*  
2 *imposing a term under paragraph (1).*

3 ~~(2)~~

4 (3) The court shall order the imposition of the middle term of  
5 the sentence enhancement, unless there are circumstances in  
6 aggravation or mitigation. The court shall state the reasons for its  
7 choice of sentencing enhancements on the record at the time of  
8 the sentencing.

9 ~~(3)~~

10 (4) Any person who is convicted of a felony enumerated in this  
11 paragraph committed for the benefit of, at the direction of, or in  
12 association with any criminal street gang, with the specific intent  
13 to promote, further, or assist in any criminal conduct by gang  
14 members, shall, upon conviction of that felony, be sentenced to  
15 an indeterminate term of life imprisonment with a minimum term  
16 of the indeterminate sentence calculated as the greater of:

17 (A) The term determined by the court pursuant to Section 1170  
18 for the underlying conviction, including any enhancement  
19 applicable under Chapter 4.5 (commencing with Section 1170) of  
20 Title 7 of Part 2, or any period prescribed by Section 3046, if the  
21 felony is any of the offenses enumerated in subparagraph (B) or  
22 (C) of this paragraph.

23 (B) Imprisonment in the state prison for 15 years, if the felony  
24 is a home invasion robbery, in violation of subparagraph (A) of  
25 paragraph (1) of subdivision (a) of Section 213; carjacking, as  
26 defined in Section 215; a felony violation of Section 246; or a  
27 violation of Section 12022.55.

28 (C) Imprisonment in the state prison for seven years, if the  
29 felony is extortion, as defined in Section 519; or threats to victims  
30 and witnesses, as defined in Section 136.1.

31 ~~(4)~~

32 (5) Except as provided in paragraph~~(3)~~ (4), any person who  
33 violates this subdivision in the commission of a felony punishable  
34 by imprisonment in the state prison for life shall not be paroled  
35 until a minimum of 15 calendar years have been served.

36 (c) If the court grants probation or suspends the execution of  
37 sentence imposed upon the defendant for a violation of subdivision  
38 (a), or in cases involving a true finding of the enhancement  
39 enumerated in subdivision (b), the court shall require that the

1 defendant serve a minimum of 180 days in a county jail as a  
2 condition thereof.

3 (d) Any person who is convicted of a public offense punishable  
4 as a felony or a misdemeanor, which is committed for the benefit  
5 of, at the direction of or in association with, any criminal street  
6 gang with the specific intent to promote, further, or assist in any  
7 criminal conduct by gang members, shall be punished by  
8 imprisonment in the county jail not to exceed one year, or by  
9 imprisonment in the state prison for one, two, or three years,  
10 provided that any person sentenced to imprisonment in the county  
11 jail shall be imprisoned for a period not to exceed one year, but  
12 not less than 180 days, and shall not be eligible for release upon  
13 completion of sentence, parole, or any other basis, until he or she  
14 has served 180 days. If the court grants probation or suspends the  
15 execution of sentence imposed upon the defendant, it shall require  
16 as a condition thereof that the defendant serve 180 days in a county  
17 jail.

18 (e) As used in this chapter, “pattern of criminal gang activity”  
19 means the commission of, attempted commission of, conspiracy  
20 to commit, or solicitation of, sustained juvenile petition for, or  
21 conviction of two or more of the following offenses, provided at  
22 least one of these offenses occurred after the effective date of this  
23 chapter and the last of those offenses occurred within three years  
24 after a prior offense, and the offenses were committed on separate  
25 occasions, or by two or more persons:

26 (1) Assault with a deadly weapon or by means of force likely  
27 to produce great bodily injury, as defined in Section 245.

28 (2) Robbery, as defined in Chapter 4 (commencing with Section  
29 211) of Title 8 of Part 1.

30 (3) Unlawful homicide or manslaughter, as defined in Chapter  
31 1 (commencing with Section 187) of Title 8 of Part 1.

32 (4) The sale, possession for sale, transportation, manufacture,  
33 offer for sale, or offer to manufacture controlled substances as  
34 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
35 the Health and Safety Code.

36 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
37 as defined in Section 246.

38 (6) Discharging or permitting the discharge of a firearm from  
39 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
40 12034.

1 (7) Arson, as defined in Chapter 1 (commencing with Section  
2 450) of Title 13.

3 (8) The intimidation of witnesses and victims, as defined in  
4 Section 136.1.

5 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
6 487.

7 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

8 (11) Burglary, as defined in Section 459.

9 (12) Rape, as defined in Section 261.

10 (13) Looting, as defined in Section 463.

11 (14) Money laundering, as defined in Section 186.10.

12 (15) Kidnapping, as defined in Section 207.

13 (16) Mayhem, as defined in Section 203.

14 (17) Aggravated mayhem, as defined in Section 205.

15 (18) Torture, as defined in Section 206.

16 (19) Felony extortion, as defined in Sections 518 and 520.

17 (20) Felony vandalism, as defined in paragraph (1) of  
18 subdivision (b) of Section 594.

19 (21) Carjacking, as defined in Section 215.

20 (22) The sale, delivery, or transfer of a firearm, as defined in  
21 Section 12072.

22 (23) Possession of a pistol, revolver, or other firearm capable  
23 of being concealed upon the person in violation of paragraph (1)  
24 of subdivision (a) of Section 12101.

25 (24) Threats to commit crimes resulting in death or great bodily  
26 injury, as defined in Section 422.

27 (25) Theft and unlawful taking or driving of a vehicle, as defined  
28 in Section 10851 of the Vehicle Code.

29 (26) Felony theft of an access card or account information, as  
30 defined in Section 484e.

31 (27) Counterfeiting, designing, using, attempting to use an  
32 access card, as defined in Section 484f.

33 (28) Felony fraudulent use of an access card or account  
34 information, as defined in Section 484g.

35 (29) Unlawful use of personal identifying information to obtain  
36 credit, goods, services, or medical information, as defined in  
37 Section 530.5.

38 (30) Wrongfully obtaining Department of Motor Vehicles  
39 documentation, as defined in Section 529.7.

1 (31) Prohibited possession of a firearm in violation of Section  
2 12021.

3 (32) Carrying a concealed firearm in violation of Section 12025.

4 (33) Carrying a loaded firearm in violation of Section 12031.

5 (f) As used in this chapter, “criminal street gang” means any  
6 ongoing organization, association, or group of three or more  
7 persons, whether formal or informal, having as one of its primary  
8 activities the commission of one or more of the criminal acts  
9 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),  
10 inclusive, of subdivision (e), having a common name or common  
11 identifying sign or symbol, and whose members individually or  
12 collectively engage in or have engaged in a pattern of criminal  
13 gang activity.

14 (g) Notwithstanding any other law, the court may strike the  
15 additional punishment for the enhancements provided in this  
16 section or refuse to impose the minimum jail sentence for  
17 misdemeanors in an unusual case where the interests of justice  
18 would best be served, if the court specifies on the record and enters  
19 into the minutes the circumstances indicating that the interests of  
20 justice would best be served by that disposition.

21 (h) Notwithstanding any other provision of law, for each person  
22 committed to the Division of Juvenile Facilities for a conviction  
23 pursuant to subdivision (a) or (b) of this section, the offense shall  
24 be deemed one for which the state shall pay the rate of 100 percent  
25 of the per capita institutional cost of the Division of Juvenile  
26 Facilities, pursuant to Section 912.5 of the Welfare and Institutions  
27 Code.

28 (i) In order to secure a conviction or sustain a juvenile petition,  
29 pursuant to subdivision (a) it is not necessary for the prosecution  
30 to prove that the person devotes all, or a substantial part, of his or  
31 her time or efforts to the criminal street gang, nor is it necessary  
32 to prove that the person is a member of the criminal street gang.  
33 Active participation in the criminal street gang is all that is  
34 required.

35 (j) A pattern of gang activity may be shown by the commission  
36 of one or more of the offenses enumerated in paragraphs (26) to  
37 (30), inclusive, of subdivision (e), and the commission of one or  
38 more of the offenses enumerated in paragraphs (1) to (25),  
39 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern  
40 of gang activity cannot be established solely by proof of

1 commission of offenses enumerated in paragraphs (26) to (30),  
2 inclusive, of subdivision (e), alone.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.